(5) SINGLE BENCH (2)
CF 1002

IN THE HIGH COURT OF JUDICATURE CHHATTSIGARH, AT BILASPUR

Writ Petition (T) No. 5554 of 2006

Petitioner : Raghuveer Ferro Alloys Private Limited a company incorporated under the provisions of the Companies Act 1956 situate at 130/137 Sector C Industrial Area Urla Raipur (C.G.) through its director Alok Choudhari S/o Late S.S. Choudhari aged about 36 years resident of C-86/87 Sector I, Devendra Nagar, Raipur (C.G.)

P.R. No. 5004/06
Presented by Neelabh Dubey
dated 8/9/06

Versus

Respondents :(1) State Appellate Forum (For exemption) through Department of Commerce and Industries Government of Chhattisgarh Directorate Raipur (C.G.)

(2) State Level Committee (for exemption) through Department of Commerce & Industries Government of Chhattisgarh Directorate Raipur (C.G.)

(3) State of Chhattisgarh

(a) through Secretary Department of Commerce & Industries D.K.S. Bhavan, Mantralaya, Raipur

(b) through Secretary Department of Commercial Taxes, DKS Bhavan, Mantralaya, Raipur

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(6)

(3)

Before : Hon'ble The Chief Justice and his companion judges of the Hon'ble High Court of Judicature Chhattisgarh at Bilaspur.

Petition under Articles 226/227 of the Constitution of India for issuance of suitable directions orders or writs including writs in the nature of mandamus certiorari etc.

(61)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 5554/2006

PETITIONER : Raghuveer Ferro Alloys Private Ltd.

VERSUS

RESPONDENTS : State Appellate Forum and two others.

ORDER BE POSTED FOR 9-1-2007

Sd/-
Dhirendra Mishra
Judge

(62)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 5554/2006

PETITIONER : Raghuveer Ferro Alloys Private Ltd.

VERSUS

RESPONDENTS : State Appellate Forum and two others.

ORDER
(07-01-2007)

Dhirendra Mishra,J

This petition is directed against the order of Annexure P-4 passed by the respondent No.1 by which appeal/reference preferred by the petitioner against the order dated 28.2.2005 passed by the respondent No.2 has been rejected and the finding of the State Level Committee has been confirmed.

2. Grievance of the petitioner is that its Industrial Unit was granted eligibility for exemption from payment of tax for the period commencing from 12.9.1992 to 11.9.1997 vide Annexure P-1. The production started in the industry with effect from 12.9.1990. However, due to frequent break-down of machinery being transformer and furnace etc. the unit could not attain its production capacity but even then it was forced to pay minimum charges of electricity etc. and therefore, it incurred loss. Ultimately the industry was closed on 13.12.1993. Even between 12.9.1990 to 13.12.1993 the industry remained closed for a total period of 280 days and thereafter for the entire period of eligibility the unit remained closed for above reasons and thus the same remained closed for a total period of 1648 days and the same was revived on 14.6.2003.

3. The petitioner applied for eligibility for exemption from payment of tax for the period when the unit remained closed on account of the reasons beyond control of the petitioner but the same was rejected by the State Level Committee – respondent No.2 vide annexure P-2 on the ground that the reason assigned by the petitioner for closure of the

industry for 9 years such as break down of machinery, transformer or furnace and increase in electricity tariff cannot be considered as the reasons beyond control of the dealer. The appeal/reference preferred by the petitioner before the State Appellate Forum was also rejected for identical reasons.

4. Learned counsel for the petitioner submits that the State Level Committee vide its order dated 25.6.2003 in the matter of M/s Alok Ferro Alloys Private Limited, Raipur considering increase in electricity tariff as the reason beyond control of the dealer for closing the unit extended the eligibility for exemption for the period for which the industry was closed on that ground vide Annexure P-5. In another case also the State Level Committee of M.P. in its decision dated 20.6.2001 had considered closure of the unit due to break-down of boiler due to repairing of cracks in the water pond, illegal strike etc as a reason beyond control of the Unit and accordingly extended eligibility for exemption for the period for which the unit remained closed vide (Annexure P-6).

5. Learned counsel for the petitioner in support of his submissions relied upon the decision of Bombay High Court in the matter of **Associated Cement Co. Ltd. Vs. Commissioner of Income Tax** reported in **(1994) ITR 69** and on the decision of Allahabad High Court in the matter of **Commissioner of Sales Tax, U.P. Lucknow Vs. Trutuf Safety Glass Industries** reported in **{2006} 148 STC 506 (All.)** He submits that the State Level Committee while considering the eligibility for exemption in the matter of M/s Alok Ferro Alloys Private Limited, Raipur, had extended the eligibility for exemption vide order of Annexure P-5 considering that the enhancement of electricity tariff as a reason beyond control of the dealer for closure of the industry. However, in the case of the petitioner the term "reason beyond control" has been differently interpreted by the State Level Committee and the said interpretation has been upheld by the appellate Tribunal, and thus the petitioner has been discriminated by not granting eligibility for exemption to it.

6. On the other hand learned counsel for the respondent/State referring to clause 2 (vi) (a) of the notification which is reproduced in Annexure P-3 submits that whether the reasons for which the industry was closed was beyond control of the industrialist is a question of fact which is to be decided by the State Level Committee according to merit of each case. In the instant case the State Appellate Forum has considered the reasons assigned by the petitioner for closure of its industry in detail and has arrived at the conclusion that the break down of the machinery was not as a result of any sabotage or explosion and the break down in the machinery which is repairable in nature, cannot be termed to be the reason beyond control. Similarly increase in electricity tariff is also an event which is a common phenomenon which every industrialist is supposed to be aware of and the same can not be considered as a reason beyond control of the petitioner for the purpose of extending eligibility for exemption.

7. I have heard learned counsel for the parties and perused the orders passed by the State Level committee and the State Appellate Forum.

8. The State Level Committee in its concluding paragraph has mentioned that the other Ferro Alloys Industries in the State remained closed for the period of 2-3 years from the end of year 1998. However, in the instant case this particular industry remained closed right from the beginning up to year 1997 and the reasons assigned by the petitioner for closure of its unit have not been held to be the reasons beyond control of the petitioner. So far as the argument of the counsel for the petitioner that the State Level Committee had considered the enhancement of electricity tariff as a reason beyond control, is concerned, the interpretation of the State Level Committee in a particular case to the expression "reason beyond control" cannot be considered to be a binding precedent to appellate forum or any superior court. Thus the facts and the ratio of law laid down in the above judgments cited by the petitioner are of no help in the present case.

09. In the result, the petition has no force and therefore, the same is liable to be dismissed. It is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge